

State of Wisconsin



2009 Senate Bill 670

Date of enactment: **May 13, 2010**
Date of publication*: **May 26, 2010**

2009 WISCONSIN ACT 341

AN ACT *to create* 854.30 of the statutes; **relating to:** disposal of decedent's property.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 854.30 of the statutes is created to read:

854.30 Application of certain wills or trusts referring to repealed federal transfer taxes. (1) A will or trust of a decedent who dies after December 31, 2009, and before January 1, 2011, that contains a formula disposing of certain of the decedent's property that is determined by reference to exemptions, exclusions, deductions, or credits under the federal estate tax, 26 USC 2001–2801, the federal generation–skipping transfer tax, 26 USC 2601–2664, or both, shall be administered as follows:

(a) The formula disposing a decedent's property shall be administered as if the provisions of the federal estate tax and federal generation–skipping transfer tax were in force just as they were on December 31, 2009, except that the applicable exclusion amount under 26 USC 2010 (c) for decedents' estates shall be considered unlimited and the federal generation–skipping transfer tax exemption under 26 USC 2631 (c) shall also be considered unlimited, if all of the following apply:

1. The decedent is survived by a spouse.
2. If the decedent is survived by issue, all issue of the decedent are also issue of the surviving spouse.

3. The surviving spouse is a current income beneficiary of each trust funded in whole or in part by such formula, or the sole beneficiary of any other property subject to disposition by such formula which does not pass in trust.

(b) If any of the circumstances described in par. (a) 1., 2., and 3. is not present, the formula for disposing a decedent's property shall be administered as if the provisions of the federal estate tax and federal generation–skipping transfer tax were in force just as they were on December 31, 2009.

(2) A personal representative of a decedent's estate, a trustee of a decedent's trust, a surviving spouse of a decedent or any beneficiary of a will or trust to whom this section applies may petition the circuit court to apply a formula disposing of property under a will or trust by reference to the federal estate tax, the federal generation–skipping transfer tax, or both, or the exemptions, exclusions, deductions or credits under those taxes, in a manner different than that provided under sub. (1). The court may consider the overall dispositive plan of the decedent, the tax implications of alternative dispositions, the decedent's intentions in establishing the formula and such other matters as the court considers appropriate when determining how to respond to the petition. A pro-

* Section 991.11, WISCONSIN STATUTES 2007–08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

ceeding under this subsection shall be commenced within one year of the decedent's death or be barred.

(3) This section does not apply to wills or trusts that are executed or amended after December 31, 2009, or that manifest an intent that a contrary rule apply if the decedent dies on a date on which there is no applicable federal estate tax or federal generation–skipping transfer tax.

(4) In the event that the federal estate tax, the federal generation–skipping transfer tax, or both, are applicable to transfers of assets of a decedent who dies after December 31, 2009, but before January 1, 2011, due to the establishment or reinstatement of one or both of those taxes, the provisions of this section do not apply to the decedent's will or trust and the formula shall be applied in a manner consistent with the applicable tax or taxes.
